

The Washington Post

In a Fix Over Builder's Flaws

By Benny L. Kass
Saturday, March 7, 2009; F04

Q: We bought a new home in December 2007. We submitted our one-year punch list to the builder on time, via letter and phone calls. We have received no response. What should our next step be to have our home warranty honored?

A: Read the warranty document you received when you bought the house. You want to make sure that the items on your punch list -- the checklist of unfinished or malfunctioning items around the house -- are, in fact, covered under the builder's warranty. For example, some items may be covered under the manufacturer's warranty, such as roofing, siding or air conditioning. For these items, you should complain directly to the manufacturer.

Next, determine whether your builder is still in business. New-home sales are sluggish and many builders have either closed shop or filed for bankruptcy court protection.

If your builder is in the bankruptcy process, you will have to file a proof of claim with the court. The form (called a B10) is available on the Internet (<http://www.uscourts.gov/bankruptcycourts>) or from your local bankruptcy court. Although you can do this on your own, bankruptcy is a specialized area of law, and it would make sense to retain a bankruptcy lawyer to assist you.

You cannot just tell the court that your floors slant or that every time you take a shower you hear knocking in the pipes. You will need to obtain at least two estimates from licensed contractors indicating the cost of repairs. Attach those estimates (copies, not originals) to your proof of claim.

Filing form B10 does not guarantee that you will get money from the builder. There is a priority as to how any assets are to be distributed, and secured creditors (like the builder's lender) will be ahead of you.

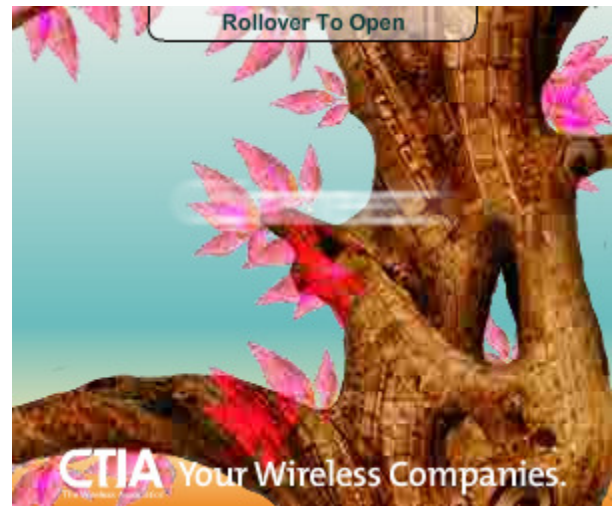
In many situations, it may be quicker -- and cheaper -- for you to make the repairs on your own, rather than relying on what the bankruptcy court may ultimately decide.

If the builder is not in bankruptcy, you may want to discuss your concerns with your neighbors. They may have similar problems. If the builder recognizes that a large number of his customers have joined to fight him, you may get a positive response.

You should also consider filing a complaint with the state and local governments. In Montgomery County, for example, there is an effective Office of Consumer Protection. In other jurisdictions, you may have to go to the state attorney general's office with your concerns.

Builders need the cooperation of state and local governments on issues such as zoning, permits and environmental matters. A builder does not want to be labeled as not honoring warranty obligations. Governments can -- and do -- impose conditions on builders: Correct the punch-list items on your last job, or we will not allow you to build anything more in our jurisdiction.

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And if all else fails, you have the right to sue the builder. But litigation is expensive, time-consuming and uncertain. You don't want to pay a lawyer \$10,000 in legal fees to get a court judgment of \$7,500. So once again, it might be in your best interest to correct the problems yourself and consider your financial loss another aspect of the current economy.

If you are a potential new-home buyer, there are many things you should do before you sign a contract. This is a buyer's market, so many of the issues that builders previously rejected are back on the table.

-- Obtain a copy of the builder's warranty in advance of signing the sales contract, and review it carefully. If you have any questions, consult your real estate lawyer or financial adviser.

-- Insist that you have your own independent building inspector periodically visit the house during construction. You will have to pay for these inspections, but the cost is generally well worth it. It is better to discover problems and defects while the house is under construction than after you take title.

-- Insist that the builder escrow some money -- say, \$5,000 -- to cover any warranty or punch-list items. Builders generally object to this because they claim they will never get the money. To address those concerns, a carefully drawn escrow agreement should be entered into, spelling out all terms and conditions, including when and how the money will be used.

Benny L. Kass is a Washington lawyer. For a free copy of the booklet "A Guide to Settlement on Your New Home," send a self-addressed, stamped envelope to Benny L. Kass, 1050 17th St. NW, Suite 1100, Washington, D.C. 20036. Readers may also send questions to him at that address or contact him through his Web site, <http://www.kmklawyers.com>.

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